

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 269 of 1987

in

SPECIAL CIVIL APPLICATION No 6538 of 1986

With

LETTERS PATENT APPEAL NO 276 OF 1987

LETTERS PATENT APPEAL NO 277 OF 1987

AND

LETTERS PATENT APPEAL NO 278 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 & 2 -Yes, No. 3 to 5 NO)

JENUSAN TEXTILE

Versus

RAJAKOT MUNICIPAL CORPORATION

Appearance:

MR AMIT M PANCHAL for Appellants in all the LPAs

MR BP TANNA for Respondent No.1 in all the LPAs

M/S TRIVEDI & GUPTA for Res. No. 2 in all the LPAs

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE J.R.VORA

Date of decision: 16/12/98

COMMON ORAL JUDGEMENT

Per: S.D. Dave, J :-

In this group of four Letters Patent Appeals, we are concerned with the common orders pronounced by the Ld. Single Judge on August 05, 1987, under which four petitions came to be decided and disposed of. The four petitions were taken out, by in all 165 petitioners who were engaged in the business of Dyeing, Printing and Manufacturing of saris at different places in the town of Rajkot. The challenge was posed by them to the notice issued by the Respondent Municipal Commissioner at Annexure-A under the provisions contained in Section 376-A of the Bombay Provincial Municipal Corporation Act, 1949, (now, hereinafter referred to as the 'BPMC Act'). Ld. Single Judge has studied the provisions contained under Section 376-A of the BPMC Act, along with the requisition which came to be issued to the petitioners who were before the Ld. Single Judge by taking out four petitions. It appears that, very many contentions were raised in the memorandum of the petitions but ultimately the ground which came to be urged before the Ld. Single Judge was in respect of the legality and the validity of the requisition in question, because the only ground which came to be urged before the Ld. Single Judge was to the effect that the requisitions have been issued without affording the reasonable opportunity of being heard and therefore the same were in violation of the principles of natural justice. The Ld. Single Judge was of the opinion that, the petitions were required to be dismissed, regard being had to the provisions contained under section 376-A of the BPMC Act and the contents of the requisition. These four Letters Patent Appeals have been directed against the above said orders.

Ld. counsel Mr. Amit Panchal who appears on behalf of the appellants, wanted to raise several contentions before us, which according to him were duly canvassed in the detailed memorandum of the petitions. Ld. counsel wanted to urge before us that the requisitions in question have been based upon no martial whatsoever and that, at the relevant time no authority including the Municipal Corporation at Rajkot had prescribed or specified the standards for the discharge of the trade effluent coming out of the sari industry. It was an endeavour on the part of the Ld. counsel to urge with vehemence that, if the above said aspects of the matter are to be taken in to consideration, then, probably this group of appeals shall have to be allowed

and the orders in question shall have to be set aside and the petitions shall have to be allowed in full.

But upon the reference to the orders pronounced by the Ld. Single Judge and especially para-14 thereof, it is evident that the solitary contention urged before the Ld. Single Judge was to the effect that the notices/requisitions have been issued without affording a reasonable opportunity of being heard and therefore, the said action was in violation of the principles of natural justice. Thus it would appear that the said was the solitary contention which came to be raised before the Ld. Single Judge, and the judicial conscience was called upon to adjudicate upon and decide the said contention alone.

Ld. counsel Mr. Panchal urges before us that, when various contentions have been taken in detail in the memorandum of the petitions, it would be open for the appellants to urge the said contentions before us, even though not urged before, and not dealt with, by the Ld. Single Judge. We are unable to agree with this contention coming from the Ld. counsel for the appellants, for the simple reason that, the voluminous petitions might be containing numerous contentions but ultimately at the time of advancement of the cause before the Court, if only a few of them or only one of them is advanced for the consideration of the judicial conscience and, if the orders are based upon that contention alone, in our opinion; it would not be open for the appellants to urge other contentions before the Bench taking up the LPAs. This is precisely so because of the reason that the judicial conscience at the relevant time was called upon to decide only some or one of the numerous grounds taken in the memorandum of the petitions. Putting the same in other words one can say that the orders are based upon only some or one of the contentions canvassed in the memorandum of the petitions and that, qua the other contentions, there is absolutely no judicial scrutiny and therefore no judicial opinion or a verdict. We therefore in the present group of appeals are not inclined to examine other contentions raised in the memorandum of appeals which were in fact not advanced for consideration before the Ld. Single Judge.

We may support ourselves by assuming, without agreeing, that the view sought to be canvassed by the Ld. counsel is correct. Such an eventuality would bring in many absurdities. The Ld. Single Judge is called upon to examine only one or two of the many of the contentions taken in the Memo of the Petition. He is invited to

render his verdict, not on all the contentions but on only one or two of them. In other words for the reasons best known to the petitioner or the counsel, he is indirectly asked not to touch other contentions which are being taken out of the very zone of consideration. The judicial conscience is not only allowed but rather diverted to be focussed only one or some of the issues. A situation of " no-verdict " on other issues is invited. The L P A Bench thereafter would be called upon to decide certain issues for the first time. The role of a Single Judge thus indirectly is being assigned to the Bench which is deprived of the advantage of having the views of the learned Single Judge before it. The entire process of adjudication before the Court in original proceedings would ultimately stand substituted by the Appellate proceedings.

The question therefore which we are now required to decide pertains to the decision rendered by the Ld. Single Judge only on the solitary ground regarding the validity and the legality of the notices/ requisitions and issuance thereof without affording a reasonable opportunity of being heard.

With a view to examine the contention coming from the Ld. counsel for the appellants, that the view taken by the Ld. Single Judge is erroneous, we shall have to concentrate upon the provisions contained under section 376-A of the BPMC Act and the notice, which according to us really is a Requisition under the above said provisions of the Act.

Section 376-A of the BPMC Act runs thus :-

" Where the Commissioner is of the opinion that the use of any premises for any of the purposes specified in sub section (1) of Section 376 is dangerous to life, health or property or is causing a nuisance either from its nature or by reason of the manner in which or the conditions under which the use is made and such danger or nuisance should be immediately stopped, the Commissioner may, notwithstanding anything contained in Section 376, required the owner to occupier of the premises to stop such danger or nuisance within such time specified in such requisition as the such requisition as the Commissioner considers reasonable and in the

event of the failure of the owner or occupier to comply with such requisition, the Commissioner may himself or any officer subordinate to him cause such use to be stopped. "

A perusal of the above said provisions occurring in the BMPC Act would go to show that, when the Commissioner is of the opinion that the use of any premises for certain purposes is dangerous to life, health or property or is causing a nuisance or such danger which requires to be immediately stopped, the Commissioner may require the owner etc. of the premises to stop such danger or nuisance within a specified time limit which is to be shown in the requisition. It is further clear that the requisition may stipulate that, in the event of the failure of the owner or occupier to comply with the requisition, the Commissioner may himself or through any of the officers subordinate to him may cause such use to be stopped.

The provisions contained in the aforementioned section could be divided in two parts. The first part would relate to the power, authority or the jurisdiction of the Commissioner to issue a requisition for the owner or the occupier of the premises, calling upon him to stop a danger or a nuisance within a specified time frame. The other part of the provisions would go to show that, the Commissioner would be entitled, when the occupier fails to comply with such requisition, to stop the use or to cause the same to be stopped.

Thus, upon a plain reading of the provisions contained in Section 376-A of the BMPC Act, it is abundantly clear that, after the requisition has been issued against the owner or the occupier of the premises calling upon him to stop the danger or the nuisance, he has got, in fact, an option to act according to the requisition. If the owner or the occupier does not act according to the requisition then it is open for the Commissioner to take suitable action through his own self or by any officer subordinate to him and to secure that such use is stopped.

After having received the requisitions the petitioners could have approached the Commissioner and could have said that, in fact the satisfaction arrived at by the Commissioner is not a genuine one or is not based upon the considerations which would be germane in the field. They could have also said that there was no

necessity of the issuance of any such requisition against them. This is one side of the coin. Turning the coin they could have said that they would comply with the requisition and therefore there would not be any necessity on the part of the Commissioner to proceed ahead and to take necessary steps for the stoppage of the danger or the nuisance.

Thus, when one reads the above said provisions contained in section 376-A of the BPMC Act, it would appear that there is an inbuilt mechanism provided under the same, under which the owner or the occupier of the premises can always go before the Commissioner, and can place before him, his own case as indicated by us hereinabove.

Even if one does not read such an inbuilt mechanism in the above said provisions, then also looking to the scheme of the Act and the purpose for which section 376-A has been enacted in the BPMC Act, it is clear that these provisions are meant for an emergent situation when the Commissioner would be of the opinion that something is required to be done by the owner or occupier of the premises to stop the danger or the nuisance; within a specified time, which is again to be shown in the requisition. It cannot be expected under a statute and that too for an authority like a Commissioner to wait, after noticing that the activity being carried on by the owner or the occupier which amounts to a danger or nuisance, should be permitted to go on for an indefinite time. This is the reason why section 376-A of the BPMC Act takes care of the entire situation under which the Commissioner can issue the requisition, and upon the failure on the part of the occupier to act according to the requisition, certain actions could be taken by him. We therefore are not in a position to agree with the contention coming from Ld. counsel Mr. Panchal that before the provisions contained under section 376-A of the Act are resorted to, there should be the usual issuance of a show cause notice to the owner or the occupier of the premises and that, the non giving of the notice would amount to the violation of the principles of natural justice.

Ld. counsel Mr. Panchal for the appellants has placed reliance upon Supreme Court pronouncement in Municipal Corporation, Appellant Vs. Chelaram & Sons And Another, Respondents, (1996) 11 SCC, pg. 127. Our attention has been drawn to head note "B" and ultimately towards paragraph-5 of the orders of the Supreme Court. But this all would go to show that the Supreme Court was

concerned with the question of giving the reasonable opportunity of being heard vis-a-vis the provisions contained under section 54 of the Bombay Town Planning Act, 1955 and Rule 27 of the Bombay Town Planning Rules, 1955. When the provisions contained in the Act and the Rules are perused, it would be apparent that a procedure has been prescribed thereunder. Section 54 of the Act says that there has been the power with the local authority to evict certain persons summarily. But this is required to be done in accordance with the "prescribed procedure". It is not in dispute that the Act does not prescribe any such procedure and therefore one is required to be in search of "prescribed procedure" by referring the Rules. Rule 27 thereof prescribes the procedure for eviction under section 54 of the Act. Rule 27-A would go to show that a local authority in the first instance is required to serve a notice, upon a person to be evicted, requiring him within a reasonable time as may be specified in the notice to vacate the land. Therefore upon a conjoint reading of the above said provisions, both under the Act and the Rules, it is obvious that the prescribed procedure is required to be followed. The prescribed procedure necessarily means giving of a notice in the first instance. In our opinion, therefore, the above said Supreme Court pronouncement on which Ld. counsel Mr. Panchal places reliance, would not assist him in his contentions before us.

Ld. counsel Mr. Panchal for the appellants also places reliance upon the Supreme Court pronouncement in Olga Tellis and others, Petitioners, vs. Bombay Municipal Corporation and others, Respondents, A I R 1986, S.C.. pg. 180. The Supreme Court therein was concerned with the provisions contained under section 314 of the BPMC Act, 1888. But in this decision also the Supreme Court has foreseen the situations which would demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended danger and so on. It has been said by the Supreme Court that, a departure from audi alteram partem may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required. The burden would be upon those who affirm their existence.

Accepting the principle and applying it as a test to the fact situation before us, it appears that the Commissioner was required to act under section 376A of the BPMC Act, when he was of the opinion that the owner or the occupier of a particular premises was required to

be given certain requisition or direction. Looking to the emergent situation with which the Commissioner of the Corporation in such cases would be concerned, we feel that the above said case law on which heavy reliance is being placed by Ld. counsel Mr. Panchal would not render him any assistance in his submissions before us.

As pointed out by us earlier, Ld. counsel wanted to urge certain contentions taken in the memo of the petition but not raised before the Ld. Single Judge. We feel that, this, as made explicit by us above is not permissible, and therefore we refrain from examining certain contentions sought to be raised by Ld. counsel for the appellants and expressing any opinion there upon. This conclusion of ours is based upon the precise say of the Ld. Single Judge that other contentions were not urged and the entire matter had proceeded upon the basis of a solitary contention, which came to be raised by Ld. counsel before him.

In our opinion, therefore, the Ld. Single Judge was perfectly justified in his conclusion and the ultimate verdict rendered by him while deciding and disposing of the petitions. We do not find any justifiable reason to cause any interference either in the reasoning or the ultimate conclusion of the Ld. Single Judge. In our opinion, therefore, these appeals require to be dismissed. We order accordingly. Appeals thus shall stand dismissed, with no order as to costs.

Ld. counsel Mr. Panchal for the appellants urges that, the interim orders granted by this Court on the Civil Applications should be continued for a further period of eight weeks, to enable the appellants to approach the appropriate forum, and to seek appropriate orders. In our opinion the request is reasonable. The interim orders granted by this Court on the Civil Applications shall continue to operate for a further period of eight weeks hereof.

/vgn.